

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Review of the Commission's
Regulations Governing Television
Broadcasting

Television Satellite Stations
Review of policy and Rules

MM Docket No. 91-221

MM Docket No. 87-8

FEDERAL COMMUNICATIONS
COMMISSION
OFFICE OF THE
SECRETARY

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COMMENTS OF POST-NEWSWEEK STATIONS, INC.

I. Introduction. Post-Newsweek Stations, Inc. ("PNS") files the following comments in response to the Commission's Further Notice of Proposed Rule Making in the above-captioned proceeding. As a television station group owner, PNS is very concerned with any possible rule modifications affecting both the national and local television ownership rules. PNS owns and operates six VHF network affiliated television stations (WDIV in Detroit, Michigan; WFSB in Hartford, Connecticut; WJXT in Jacksonville, Florida; WPLG in Miami, Florida; KPRC-TV in Houston, Texas; and KSAT-TV in San Antonio, Texas). PNS takes pride in providing each of its local communities with news, information and entertainment programming. We also recognize our responsibility to serve the viewing public and are committed to broadcast excellence in each of our markets. Based on the experience we have gained as a group owner of network affiliated stations, our concern for the local market, and our belief in encouraging diversity of media, we urge the Commission to maintain its commitment to broadcast diversity by not modifying the national ownership limits at this time. In addition, we believe the local rules should only be modified by reducing the contour overlap standard to a Grade A overlap prohibition. PNS also opposes the concept of local marketing agreements in the television context.¹

¹ PNS does not at this time take a position on the other issues in the Commission; Further Notice.

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II. National Ownership Caps. The Commission made a determination in 1984 to modify the national television ownership limits from seven to twelve.² At the same time, the Commission further restricted the ability of large group owners and the three broadcast networks by adopting a 25% national audience reach cap. Earlier the Commission had determined it should totally eliminate the national ownership rules over time. With the assistance of Congressional intervention and a reexamination of the public interest benefits from the limits, the Commission correctly determined that ownership of television broadcast stations should not be a purely marketplace decision. That decision by the Commission has well served both the broadcast industry and the public.

The United States now has a system of broadcasting that is the envy of the rest of the world. Through these ownership limits, television broadcasting has been permitted to develop as a system of many diverse owners serving their respective local communities. All of the Commission's diversity goals, as noted in the Further Notice, have been assisted by the current system. Broadcasting has now seen the creation of a fourth network and the potential for two more national networks. Had the ownership rules not been in place, it is highly unlikely that these new national networks would have been created. The three major national networks would have owned stations in all the major markets. Such a situation would have reduced the number of television stations which a new network could own or affiliate with.

Under the current system, new networks have purchased stations in major markets, network affiliates of ABC, CBS and NBC have switched their affiliations and become more independent of the networks. Such changes in the communications marketplace and in the network-affiliate relations has been one reason the Commission is considering eliminating its financial interest and syndication rules. The Commission also has been examining its other network rules with an eye towards further deregulation of the networks.

² Amendment of Multiple Ownership Rules, (Gen. Docket No. 83-1009), 100 FCC 2d 17 (1984), recon granted in part, 100 FCC 2d 74 (1985).

While this proceeding may be perceived by some to be a battle between the national networks and large group owners versus affiliates, individual owners and smaller group owners, it should not be viewed as such. A great deal more is at stake in this proceeding than the financial relationship between these parties. Those who argue against modification are not protectionist of private interests as some would suggest. Rather, we are protectors of the public interest who support a system of free over-the-air broadcasting that is working properly. The question of modifying the national ownership must be examined in the context of the public interest standard. PNS submits that the public would be better served by retention of the current national ownership limits. The Commission's proposal and the Congressional bills which seek to modify the rules through the adoption of an audience reach cap of 50% of U.S. households has the potential to destroy the American broadcast system. Removal of the television national ownership caps will result in a system made up of a very limited number of owners.

The special nature of broadcast television rests in large measure with the diversity of outlets, programming and viewpoints. Further concentration would lessen rather than expand these well-recognized public interest goals of diversity. Under the Commission's proposal, one entity could totally control the news, information and entertainment programming for fifty percent of the American public. The fewer the number of owners, the greater the possibility for the demise of the individual owner or the small group owner -- the very people that helped make broadcast what it is today.

How will the public be affected? The American public has enjoyed the current system. There is presently no adequate substitute for broadcast television to the many viewers who appreciate the service to their communities provided by the free over-the-air television service. As the Commission acknowledges in its Further Notice, broadcast television is still the primary source for news, public affairs and entertainment programming. Before changing the system, the Commission must understand the ramifications of its actions. The burden should lie with those who seek modification and they

should be required to provide strong justification for removal or substantial modification of the caps.

Proponents of elimination of the rules have cited the need to compete in the new telecommunications environment. PNS recognizes that the communications landscape is not static and that the need for broadcast television to find ways to compete effectively against the existing forms of competing media and those on the horizon is critical to the long-term viability of free over-the-air television. PNS disagrees with those who argue that eliminating the television ownership caps is the only or even best way to assist broadcasters in the new age. Removing the national caps will assist a limited number of broadcasters and others who seek a quick return on their investments. It will not assist the majority of broadcasters who desire to continue to serve their communities of license. Moreover, elimination of the caps has the potential of closing the door to broadcast ownership for minorities, women and small business owners.

Although the Commission asserts that elimination of the national limits would have no effect on concentration of media ownership or diversity in the local market, PNS must disagree. Permitting greater levels of national ownership also impacts the local television market. It may become increasingly difficult for the television station owned by a single entity or a small group to compete where several stations in the market have access to the resources inherent in being a part of a large group or a national network. Stations which are not affiliated or owned by a large group or a national network may not survive the competitive challenge presented in a non-regulated television marketplace. The Commission's analysis also fails to consider the difference between a weak competitor and a strong competitive station.³ Moreover, it fails to acknowledge the marketplace reality that some local stations may cease operations and thereby decrease the number of local voices.

³ PNS does not suggest that it is the Commission's role or duty to favor one station over another. PNS merely points out that the structural rules were designed to ensure a marketplace devoid of unfair competitive pressures. Since the government has the authority to authorize frequencies, it should ensure the public is best served through legitimate competition.

Greater concentration of media in the national market can lead to greater concentration in the local market.

There are so many other open proceedings at the FCC where the Commission can assist broadcast television in this new competitive environment. For example, broadcasters have urged Congress and the Commission to provide a second channel for advanced television service. The ability to "multiplex" existing channels may offer some solutions for broadcasters. The Commission also could ensure that broadcast television gets access to the wired networks provided by cable or the telephone companies. Expedient action on these and other technical based improvements for broadcast service would be more helpful than removal of the ownership limits.

III. The Local Ownership Caps. At the same time the Commission proposes to modify the national ownership limits, it has suggested drastic changes to the local rules. The Commission correctly recognizes that the local rules are designed to promote competition and diversity. The current rules provide each local community with many different viewpoints on issues affecting the daily lives of its citizens. There has been robust competition for these local viewers. Broadcasters have responded to the competitive challenge by offering more of a local presence and greater involvement in the local community.

PNS believes the Commission's local ownership rules have worked in accomplishing the FCC's public interest goals. There is no need to eliminate or substantially modify the duopoly rule. The Commission can accomplish its purpose of providing greater flexibility to local broadcast television owners and still ensure competition and diversity by less drastic means. In this regard, PNS supports the Commission's proposal to relax the duopoly rule by decreasing its prohibited contour overlap from Grade B to Grade A.

As the Commission recognizes, the television marketplace is much different than radio. First, there are fewer numbers of stations in the local market. Second, the definition of the market encompasses a much larger area in the television context. Third, the potential for harm to the Commission's

competition and diversity goals are much more significant in the television market.

The Commission should remember that before permitting ownership of more than one radio station of the same service in a community, it first implemented a contour overlap standard reduction. In this regard, it modified its radio rules from a 1 mV/m to a city grade contour standard. After many years of study and comments from the affected parties on the impact of the reduction of the contour standard, the Commission determined it was advisable to permit further modifications. The Commission in this proceeding proposes to simply leapfrog over that crucial step when it modifies the television ownership rules.

The Grade A contour standard more accurately reflects the local television market. The Commission's modification of its rules to this standard would simply be a governmental recognition of a marketplace reality. On the other hand, common ownership of two or more television stations whose Grade A contours overlap could severely impede the Commission's diversity and competition goals. As with the national rules, PNS understands the advantages to be obtained through joint efficiencies gained by common ownership of television stations. However, when balanced against the loss of diversity and the competitive harms, PNS believes the Commission must vote in favor of only minor relaxation of the rule.

The robustness of the local television market would be lost if the Commission permits an entity to own more than one station in the local market. To fully understand the impact of these possible rule changes, one must consider the fact that there potentially would be more than one combination. For example, instead of having six separately owned stations and six separate voices in the community, there would be only three.⁴ Even if there were originally eight stations in the market, it is highly improvable that these two non-commonly owned stations would be able to effectively compete in the

⁴ The Commission rules on radio ownership and the one-to-a-market rule proposals could further exacerbate the problem.

local market. The loss of competition and diversity in the local market from such a scenario is not in the interest of the public. Rather than many diverse voices, these communities would be left with myopic viewpoints of the world and the local community.

PNS also disagrees with a standard for the local ownership rules based on whether the station is a UHF or VHF station. Such a rule would complicate the Commission's decision making process without any public interest benefits. In today's marketplace, the difference between ownership of UHF and VHF stations from a technical and competitive standpoint is not significant enough to justify discounting UHF stations for competitive and diversity purposes. Some UHF stations are owned by one of the national broadcast networks and most are highly competitive in their local markets. Moreover, carriage on wired and non-wired cable systems and the advent of ATV may make the distinction between UHF and VHF even less relevant. It is ironic that the Commission proposes creating this distinction when it has proposed in the ATV proceeding to have all television stations eventually located on the UHF band. PNS believes the Commission should not modify its rules to permit two UHF stations, a UHF and a VHF or two VHF stations to be commonly owned in the same local market.

PNS recognizes that there may be situations where common ownership of two television stations in the same market may be in the public interest. The Commission must, however, ensure that these are the exceptions to the rules. In this regard, PNS believes the Commission could accomplish its public interest obligations through a "financial litmus test." Stations which have failed based on financial considerations could be eligible for waivers of the duopoly rules. The determination of which stations qualify under the financial litmus test must be conducted with an opportunity for the public to comment. Moreover, the Commission should consider the competitive impact of the decision on other media in the community. Finally, waivers should have a time limit whereby the station is encouraged to some day provide a separate

voice in the community. Under such a scenario, the public is served by having more programming and eventually a new stronger and separate viewpoint.

IV. Local Marketing Agreements. PNS opposes the use of local marketing agreements ("LMAs") by broadcast television stations.⁵ PNS believes that LMAs have many of the same potentials to undermine the Commission's public interest goals in competition and diversity as would changes in the local ownership rules.

Currently, there are no FCC rules directly regulating LMAs between television station owners. The Commission consequently is unaware of what has been occurring with these agreements. Some of these LMAs raise questions as to whether or not the stations involved have violated the duopoly rules, the rules against unauthorized transfer of control, and other FCC policies and rules. The FCC by not mandating that these agreements be filed at the Commission or establishing an approval process, has left open to inquiry the number of stations which have set up LMAs as a means around the Commission's duopoly and other rules. Unlike radio, the television duopolies are occurring in situations where the local ownership rules would prohibit an agreement. The agreements are long-term with some ten years in duration. In some instances, the only semblance of true management control by the owners is one full time employee -- the General Manager. Some penalize the LMA station if it desires to program more than three (3) hours of programming per week. It is also interesting to note that some of these LMAs are tied to option agreements which have been signed in anticipation of a change in the Commission's ownership rules. The Commission should not permit television broadcasters who have flaunted the ownership rules to benefit unfairly from their actions.

LMAs serve few public interest goals. They do not promote the best use of the broadcast spectrum. These frequencies could be operated by new owners

⁵ PNS has filed an informal objection to an LMA in San Antonio, Texas and requested a Commission investigation into an LMA in the New Haven, Connecticut market.

who would bring a new innovative voice to the community. Instead, LMAs become weapons to be used anticompetitively in the local market. The public suffers from the lack of diversity and competition.

PNS recognizes that the Commission may want to adopt rules to permit some form of LMAs. PNS urges the Commission to adopt very stringent rules which at a minimum mirror the requirements of the radio rules. Specifically, PNS believes LMAs should be subject to the following standards:

- (1) Owners should not be permitted to LMA a station in a market where it would be prohibited from owning the station. As stated earlier, PNS acknowledges that there are situations where waivers should be permitted based on the applicant meeting the requirements of a financial litmus test;
- (2) The length of the term of the agreement should not exceed a license term of the station;
- (3) The agreement must be filed with the Commission and the public permitted an opportunity to examine and file petitions to deny; and
- (4) No grandfathering of the current LMAs should be allowed. All broadcasters should compete under the same rules. It would be patently unfair to allow those who established LMAs before the rules were adopted to have an advantage over other broadcasters in their community. Moreover, the Commission made no promises or representations to parties that would create any rights in an LMA. The Commission should immediately have all current LMAs reviewed for compliance with the duopoly rules.

V. Conclusion. For the above stated reasons, Post-Newsweek Stations, Inc. urges the Commission not to modify its national ownership rules. PNS supports limited modification of the local rules to permit common ownership when the Grade A contours do not overlap. Finally, PNS opposes permitting television stations to enter into local marketing agreements.

Respectfully submitted,

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